
**Financial Institutions & Insurance
Committee**

HB 1587

Brief Description: Authorizing the consideration of mitigating factors for enforcement actions under the mortgage broker practices act.

Sponsors: Representatives Kirby, Bailey, Hurst, Roach and Simpson.

Brief Summary of Bill

- Requires the Department of Financial Institutions (DFI) to consider certain mitigating factors in any investigation or any enforcement action.
- Limits the ability of the DFI to impose investigate or examine a licensee, order restitution or impose fines in certain situations unless there is high culpability by the licensee.

Hearing Date: 2/5/09

Staff: Jon Hedegard (786-7127)

Background:

The Department of Financial Institutions (DFI) licenses mortgage brokers and loan originators under the Mortgage Broker Practices Act (MBPA). The MBPA has provisions regarding licensing, continuing education, prohibited practices, examinations, investigations, and criminal, civil, and administrative penalties. The Director of the DFI (Director) may impose fines, order restitution, and suspend or revoke a license for violations of the MBPA.

The DFI has adopted rules regarding what the DFI may consider in an effort to determine who is responsible when a violation of the act has occurred. Among the factors the DFI may consider are:

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- the adequacy of any background and experience investigation conducted prior to hiring or contracting with any person;
- the adoption of policies and procedures for: (1) supervision and training, (2) monitoring continuing education requirements and legal compliance under the MBPA, (3) regularly reviewing work performed, (4) training in the requirements of the MBPA and rules and (5) acting on reports of alleged misconduct;
- adopting a system of review for implementation and compliance with the policies and procedures;
- providing copies of the MBPA and rules; and
- the frequency and completeness of review conducted on work performed by any person subject to the MBPA.

Any proceedings and appeals related to a license denial, a cease and desist order, suspension or revocation of a license, and the imposition of civil penalties or other remedies issued under the MBPA are governed by the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

Summary of Bill:

The Director must consider circumstances that may mitigate the seriousness of a violation in any investigation or any enforcement action. Mitigating factors include:

- if the licensee voluntarily disclosed of the violation or activity;
- the timeliness of the disclosure;
- the likelihood that the Director would have discovered the violation in a timely fashion without a voluntary disclosure;
- the cooperation of the licensee during any investigation;
- any remedial measures taken to correct any flaws in internal procedures;
- the length of time without prior administrative actions against the licensee;
- if the licensee has specific business practices;
- if the violation should have been reasonably anticipated;
- if the violation was a matter of inadvertence, simple negligence, or gross negligence;
- if there were prior audits of the company that failed to reveal the violation;
- a positive score or report obtained in any prior audits; and
- any other mitigating factors adopted by the Director by rule.

When a licensee voluntarily discloses a deliberate and knowing violation by an employee or independent contract loan officer that was intended to be concealed from the licensee, the Director must:

- pursue the employee or independent contract loan officer and exhaust all legal remedies in an effort to make restitution for harmed consumers;
- not impose any fees or penalties of any other kind upon the licensee; and
- not audit, examine, or investigate the licensee.

The Director must encourage licensees to report violations by minimizing sanctions imposed upon a reporting individual. If the reporting person is a licensee or acting on behalf of a licensee, unless there is high culpability by the licensee, the Director is not allowed to:

- suspend or revoke a license; or
- require restitution for the consumer from the licensee.

Examples of high culpability include when the licensee:

- has actual knowledge of the act when the act is committed; and
- is grossly and recklessly negligent in supervision.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.